



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-P-A-

DATE: OCT. 29, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a researcher working in the area of comparative effectiveness research (CER), seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that his proposed endeavor in CER is in the national interest, and thus that a waiver of the job offer requirement should be granted.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent

or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

As noted in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner did not indicate that he was employed, but that he had recently been working as a researcher at [REDACTED] Delaware.⁴ During his employment there, the Petitioner conducted studies involving the comparative effectiveness of drugs used to treat atrial fibrillation, the use of automated algorithms as an aid for oncologists making treatment decisions, and strategies for reducing costs in the healthcare industry.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Director found that the Petitioner's proposed endeavor as a researcher in the field of CER has both substantial merit and national importance. In particular, the Petitioner's work towards improving health outcomes and lowering healthcare costs was found to be meritorious. Further, the record documents the importance of the Petitioner's proposed area of research, and his dissemination of this valuable information to physicians and others in his field through publication of his research supports a finding that it has a potential impact on the national level. For instance, the Petitioner submitted a 2010 editorial published in the [REDACTED] which stressed the importance of CER in health care legislation being considered at the time, as well as testimony before the U.S. House of Representatives in 2007 which details the potential impact of CER analysis on rising health care costs. We agree with the Director, and therefore find that he meets the requirements of the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner submitted documentation of his academic credentials and scholarships, his peer-reviewed papers and conference abstracts, professional media discussing his work, and evidence of his service as a peer reviewer. Upon review of this evidence, we find that it does not establish that the Petitioner is well positioned to advance his proposed endeavor of research in the field of CER.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner presented copies of his diplomas for his Bachelor of Medicine, Bachelor of Surgery degree from [REDACTED] Master of Science degree from the [REDACTED] and Master of Business Administration degree from [REDACTED]. See 8 C.F.R. § 204.5(k)(3)(i)(A).

⁴ We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

The Petitioner has documented his educational credentials and experience in the field, which he highlights in his appeal brief. This also includes the evidence of a scholarship he received while pursuing his graduate degree. However, academic and experiential qualification is only one factor to be considered in determining whether the Petitioner is well positioned to advance his proposed endeavor. Others include whether he has shown a record of success in his previous work, his progress towards achieving his proposed endeavor, and the level of interest in his endeavor from relevant individuals.

In response to the Director's finding that the evidence does not establish that his published work has been frequently cited by other researchers, the Petitioner argues that citations "are not required evidence to prove eligibility of [sic] the second prong." It is true that neither the applicable statute and regulations, nor the *Dhanasar* decision, require the submission of such evidence. However, the record does not otherwise establish that his record of work as a researcher shows that he is well positioned to advance his proposed endeavor. On appeal, the Petitioner asserts that his research "has found practical application by employers, businesses, patients and consumers within the United States," but does not refer to specific examples in the record. We note that [REDACTED], a former colleague of the Petitioner's, indicates that the Petitioner led a company-wide effort at his former employer to identify healthcare efficiencies, "demonstrating a potential \$103 million savings in 2016." The Petitioner also submitted a presentation summarizing this effort, but did not submit evidence that the results of this project were implemented by his employer. In addition, there is no indication that this work was, or would be, disseminated to the field at large to possibly generate interest in the CER field outside of the Petitioner's employer.

[REDACTED] also writes in his letter about the Petitioner's research on the use of an automated algorithm to guide physicians' use of colony stimulating factors (CSFs) during cancer treatment. The Petitioner submitted evidence that he presented an abstract about this research at the 2017 [REDACTED] and that this abstract was one of three which were also published in [REDACTED]. In addition, an article concerning the research, which focused on the use of CSFs per ASCO guidelines, was published on ASCO's news website, <http://www.ascopost.com>, as well as other medical news websites targeting pharmaceutical companies and oncologists. Although this evidence confirms that this work was made available to oncologists and other researchers in the Petitioner's field, the record does not demonstrate that these professionals have incorporated his automated algorithm into their own work or that it otherwise constitutes a record of success or has garnered interest from oncologists, researchers, or other relevant individuals.

The Petitioner also submitted evidence regarding his research comparing the effectiveness of medications developed to treat atrial fibrillation. A letter from [REDACTED] of [REDACTED], the Petitioner's former employer, recommends him for the [REDACTED] based upon this work, for which he was selected as one of five finalists and received a travel grant to present his work at an AHA conference. Similar to the Petitioner's work on CSFs described above, this work was published in peer-reviewed scientific journals, and also described in an article posted to a medical news website. While an expert interviewed for the article describes the Petitioner's work as "a very important study," the record does not include evidence that it has generated substantial positive discourse in the CER community, or that its findings have significantly altered healthcare decisions at the patient or institutional level.

In sum, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rises to the level of rendering him well positioned to advance his proposed endeavor of continuing research in the field of CER. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. Accordingly, we affirm the Director's determination on this issue.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Director found that because the Petitioner did not meet the requirements of the second prong, and thus was not eligible for a national interest waiver, a third prong analysis was not necessary. While we agree that the Petitioner is ineligible as he has not satisfied the second prong of the *Dhanasar* framework, we will briefly consider several arguments that he presents on appeal in support of his claim under the third prong.

First, the Petitioner asserts that additional time and effort would be required for employers to recruit a qualified U.S. worker for research projects that he is already pursuing. However, at the time of filing, the Petitioner indicated that he was not employed, and he has not explained or demonstrated how it would save a potential employer time or effort to recruit and hire him instead of a U.S. worker. Further, the Petitioner has not asserted or established that there is an urgent national interest in his prospective contributions to the endeavor that outweighs the national interest in protecting the domestic labor force through the labor certification process.

Second the Petitioner states that it is impractical for him to secure a job offer, "since his ability to research is not necessarily contingent on one employer's ability to hire and retain him at their facility." We note that the Petitioner does not claim to have conducted independent research in the past, nor has he submitted documentary evidence to demonstrate that he has the resources necessary to do so. Regardless, even assuming that the Petitioner would be able to conduct his research without the support of an employer, it is not apparent that this would make it impractical to secure a job offer, as he has not identified any particular impediment which would affect his ability to do so.

Third, the Petitioner states that the labor certification process could possibly "prevent a petitioning employer from hiring a foreign national with unique knowledge or skills, as it they [sic] may not be easily articulated in the labor certification." While the *Dhanasar* decision presents this as a factor to be considered in the balancing of national interests in the third prong, the Petitioner does not identify or explain which of his skills might not be accounted for in the labor certification process.

Finally, the Petitioner asserts that the United States will benefit from his research contributions, despite the presence of qualified domestic workers in his field. However, the third prong balances the national interest in protecting the United States' domestic workforce against any other positive national interest factors demonstrated by the foreign national. As previously discussed, the Petitioner has not demonstrated that his past work constitutes a record of success in his field or has generated notable interest among relevant parties. Here, the record does not demonstrate that the Petitioner's prospective contributions hold such value that they outweigh those inherent in the labor certification process.

Therefore, upon review of the record and consideration of the factors set forth in *Dhanasar*'s third prong, we do not find that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of G-P-A-*, ID# 1561756, (AAO Oct. 29, 2018)